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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,552	02/05/2004	Andrew Valdez	VLD 302	5519

.. 7590 10/24/2006

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EXAMINER

CHAPMAN, JEANETTE E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 10/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/772,552

Applicant(s)

VALDEZ, ANDREW

Examiner

Chapman E. Jeanette

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 10 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-15, 17 and 22-26 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

Newly submitted claims 18-21 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The method could be used with a shoring device having limitations over and above those recited in the article or apparatus claims.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 18-21 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9-15 and 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen (6296038). Chen discloses a system which may be used as an alignment system as much as applicant's device is termed or described as such having the same limitations. The system comprises:

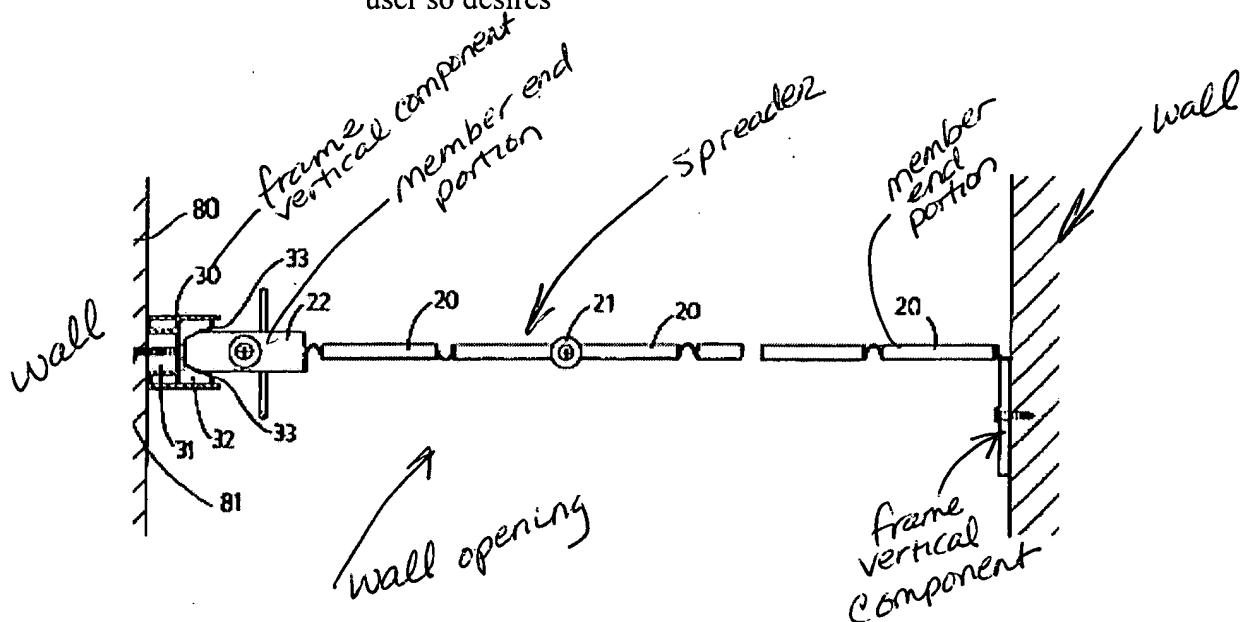
1. a frame to be positioned in a wall opening; the frame includes
  - a. horizontal components 23
  - b. two spaced apart vertical components 30 and the opposite end; see figure with annotations below.

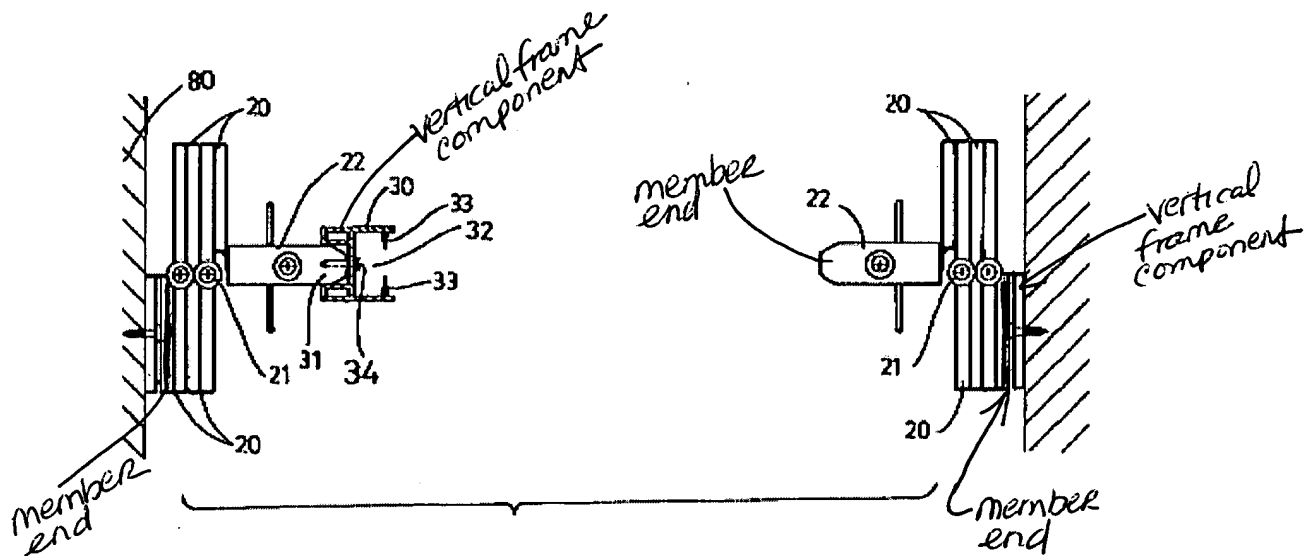
2. a spreader 20/21 with folded and unfolded positions, figures 2 and 3 defining at least one spreader distance for the two vertical frame components; the spreader including:
  - a. a plurality of members 20/22; the summed lengths of unfolded members defining the at least one spreader distance; see figure 3
  - b. hinges to pivotally join each member to at least one other member
  - c. at least two member end portions configured to contact the frame components and receive surface features of the vertical frame components
  - d. four members joined by a hinge and the sum of the unfolded member lengths define at least one spreader distance for the vertical components
  - e. the third member moves between an unfolded position, figure 3, in which the summed lengths of all three defines a first spreader distance and a folded position with the third member overlapping the first member in which the summed lengths of the first and second members in the unfolded position define a second spreader distance; figure 1
  - f. Figure 3 shows the spreader with three member ends; see annotations on patent copy; each configured to receive surface features of the vertical frame components
  - g. The third member moves between an unfolded position extending from the first member and a folded position overlapping the first member and the fourth member moves between an unfolded position extending from the second member and a folded position overlapping the second

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member; with the first and second members in an unfolded position: (see figures 1-4)

- i. With the third and fourth member in the folded positions overlapping the first and second members and the summed length of the first and second defining a first spreader distance
- ii. The first, second and third members capable of defining a second spreader distance
- iii. The first, second and fourth members define a third spreader distance. See figure 4. One can unfold any panel in an adjustable manner making the panel of any and many different lengths as the user so desires





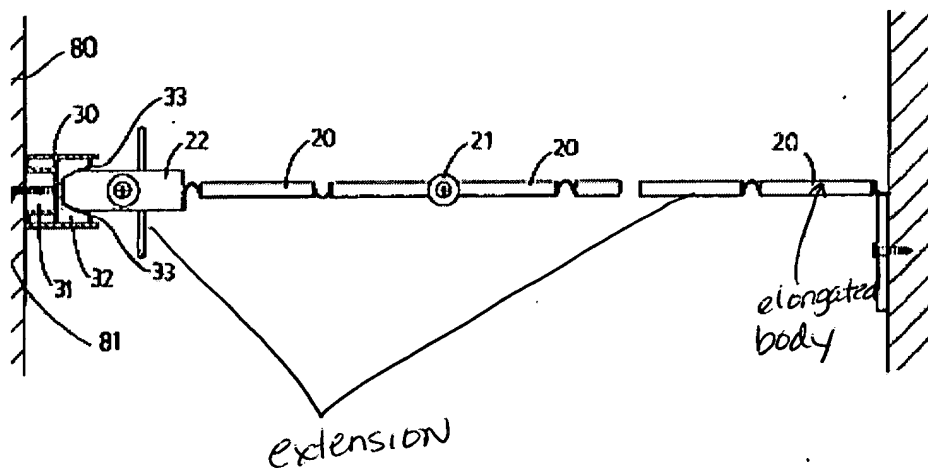
For claim 22:

Chen discloses a frame spreader with at least one preset length as the user so desires that spaces the frame components 30 in a wall at a preset distance. The spreader comprises:

- at least one elongated body ; see annotations on patent copy of figure 4
- a first extension hingeably attached to the body member and configured to move between a folded position and an unfolded position where
  - in the folded position the extension overlaps the body member and the folded extension does not contribute to the spreader length. See figure 2
  - in the unfolded position the extension extends from the body member and the unfolded extension contributes to the spreader length
- the frame components 30 are repositioned to contact the ends of the spreader at the preset spacing distance; see figure 4

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- the at least one end of the body member and the first extension conforms in part to the profile of the frame 30 for which the spacing is set
- Figure 4 shows a second extension hingeably attached to the at least one elongated body member and configured to move between a folded position and an unfolded position; when folded....., the second extension does not contribute to the spreader length and in the unfolded position....., the second extension contributes to the spreader length
- At least one end of the first extension, the body member and the second extension in part conforms to the profile of the frame component



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Oct. 2, 2001

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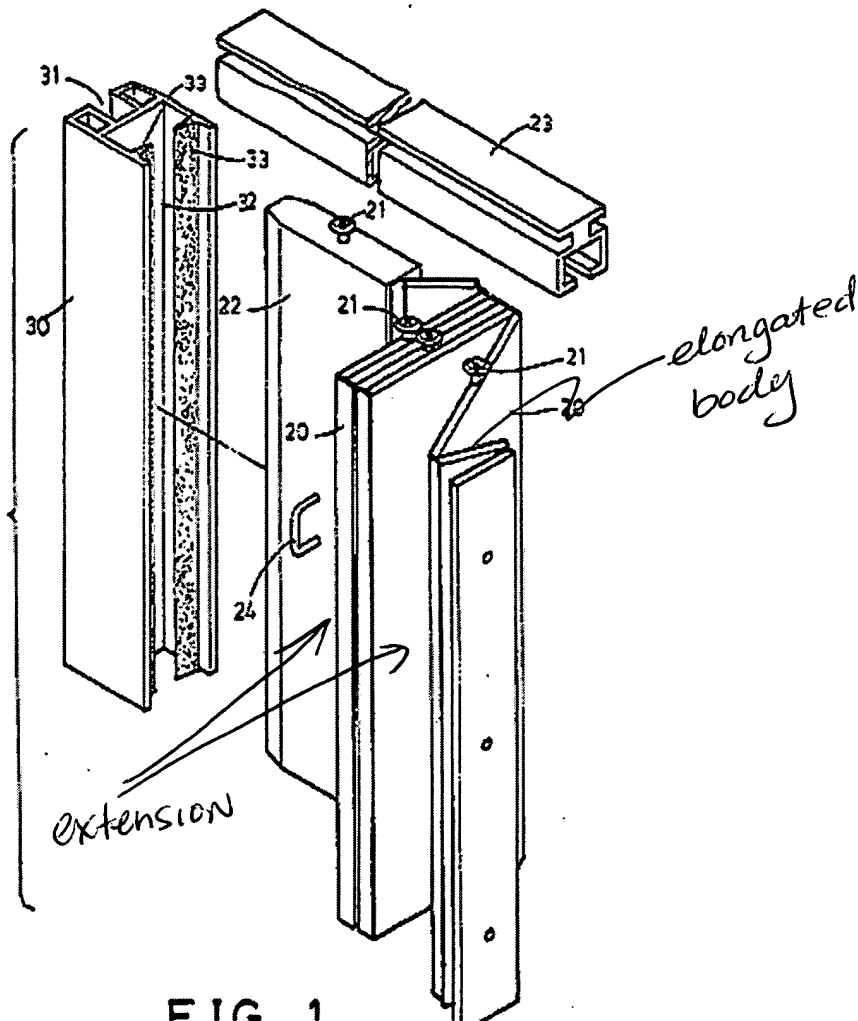


FIG. 1



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen.

In order for the spreader to move across the floor between the folded and unfolded position the standoffs must exist; they must exist for the invention to operate as intended. One of ordinary skill in the art would have appreciated the commonality of the standoff's for such devices in order for them to operate as intended.

***Allowable Subject Matter***

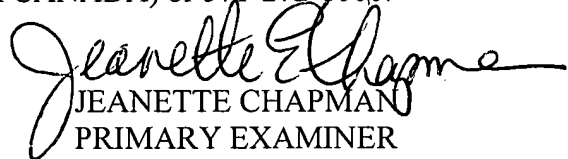
Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E. Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-thursday, 8:30-6:00, every fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
JEANETTE CHAPMAN  
PRIMARY EXAMINER  
ART UNIT 3635

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